

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE: NATIONAL PRESCRIPTION
OPIATE LITIGATION**

THIS DOCUMENT RELATES TO:

*“Track Three Cases”*¹

**MDL No. 2804
Case No. 17-md-2804
Judge Dan Aaron Polster**

**SECOND REVISED CASE MANAGEMENT ORDER
FOR TRACK THREE**

This Order supersedes the previous Revised Case Management Order for Track Three dated January 6, 2021 (Dkt. #3595), which incorporated by reference the Track Three Case Management Order Nunc Pro Tunc dated June 8, 2020 (Dkt. #3329) (collectively, the “Prior Track 3 CMOs”), for all dates post-fact discovery. The Prior Track 3 CMO deadlines and limits that were set forth in Sections A-F of those orders remain in effect. Additionally, certain dates provided for in Section K below are the subject of certain stipulations between the parties, which will be separately negotiated by the parties in light of the deadlines set forth below and then subsequently incorporated by reference.

[Sections A-F are unchanged.]

G. Expert Discovery Deadlines (Except for Abatement Experts)

1. Unless otherwise agreed to by the parties, Plaintiffs’ experts Anna Lembke, Dan Malone, Katherine Keyes, James Rafelski, and Caleb Alexander (whose reports plaintiffs served on April 16, 2021 and who plaintiffs confirmed in writing on May 10, 2021 will not be amended based on plaintiffs’ revised red-flag methodology), will be deposed on the following dates: Keyes – June 3, 2021; Rafelski – either June 10 or 11, 2021; Lembke – May 28, 2021; Malone – May 28, 2021; Alexander – May 27 or 28, 2021. Any expert previously disclosed that will testify only

¹ The Track Three cases are *County of Lake, Ohio v. Purdue Pharma, L.P. et al.*, Case No. 1:18-op-45032 (N.D. Ohio); and *County of Trumbull, Ohio v. Purdue Pharma, L.P. et al.*, Case No. 1:18-op-45079 (N.D. Ohio).

during a potential abatement phase of the Track 3 trial will not be deposited at this time (i.e. Plaintiffs' experts, Nancy Young and Harvey Rosen).

2. **May 19, 2021** – Plaintiffs shall serve their amended expert reports for David Cutler, Carmen Catizone, and Craig McCann, with revisions permitted only relating to Plaintiffs' revised red-flag methodology. Plaintiffs will further indicate with specificity (via redline or otherwise) what changes they made. Plaintiffs will propose for each such expert two proposed deposition dates between June 1, 2021 and June 11, 2021. With respect to Carmen Catizone, Defendants' deposition time is extended to 10 hours.
3. **June 25, 2021** – Defendants shall serve expert reports and, for each such expert, provide two proposed deposition dates between **June 30, 2021** and **July 14, 2021**.
4. A schedule for the disclosure and discovery of Defendants' expert witnesses who are testifying only in the abatement-phase of the Track 3 trial (in the event that one becomes necessary), and the depositions of Plaintiffs' abatement experts (whose reports have already been disclosed), will be set after the conclusion of the liability phase of the Track 3 trial.

Addendum of Expert Reports Based on "Notes Fields" Information

5. Plaintiffs as a group may provide short addendums for no more than three of their expert reports (chosen from amongst Lembke, Catizone, Rafalski, and McCann) disclosed on April 16, 2021 and/or amended on May 19, 2021, to address "notes fields" information produced by defendants. Such addendums shall be due on the date **10 calendar days** after Defendants' certification of completion of production of the "notes fields" information. The deadline for deposition of Plaintiffs' experts regarding their addendums shall be **10 calendar days** after the due date for their addendums.
6. Each Defendant shall likewise be permitted to provide short addendums for no more than three of their expert reports to address the "notes fields" information produced by Defendants. Such addendums shall be due on the date **20 calendar days** after the due date for Plaintiffs' experts' addendums. The deadline for deposition of Defendants' experts regarding their addendums shall be **10 calendar days** after the due date for their addendums.
7. Unless otherwise agreed, the expert depositions referred to in Sections G.6-7 will be limited to two hours each and will be limited to only the opinions contained in the addendums.

H. *Daubert* and Dispositive Motions

1. **July 20, 2021** – Deadline for *Daubert* and dispositive motions.
2. **August 13, 2021** – Deadline for responses to *Daubert* and dispositive motions.
3. **August 23, 2021** – Deadline for replies in support of *Daubert* and dispositive motions.
4. The parties may file supplemental *Daubert* motions based on the experts' addendums described in Section G.5-6, as follows. Each side may submit a single *Daubert* motion addressing only the opinions contained in the addendums, not to exceed 25 pages each. The deadline for these motions shall be **twenty calendar days** after the due date for Defendants' experts' addendums. Responses are due **seven calendar days** thereafter, not to exceed 15 pages each; no replies are permitted.
5. **September 10, 2021, 9:00a.m.** – *Daubert* hearing.

I. **Motions in *limine***

1. **August 9, 2021** – Motions *in limine* due.
2. **August 30, 2021** – Responses to motions *in limine* due.
3. **September 7, 2021** – Replies to motions *in limine* due.

J. With respect to *Daubert*, summary judgment, and *in limine* motions, the parties agree to meet and confer on mechanisms to avoid unnecessarily lengthy or duplicative briefing while preserving the record based on motions filed in separate tracks of the MDL.

K. **Pre-Trial Deadlines**

1. **July 1, 2021** – Parties to exchange proposed jury instructions, verdict forms and interrogatories.²
2. **July 8, 2021** – Parties to email jury questionnaire to the Special Master.
3. [Deadline for exchange of affirmative designations is included in the parties' stipulation.]
4. **Preliminary statements.**

² The court has already received copious submissions on these topics from the parties in this and other Case Tracks. The parties are directed not to submit materials that are repetitive or that contravene the Court's earlier conclusions on jury instructions.

- (a) **July 8, 2021** – Parties to exchange proposed joint preliminary statements.
 - (b) **July 15, 2021** – Parties to email joint preliminary statement to Chambers.
- 5. **July 15, 2021** – Parties to file jury instructions, verdict forms, and interrogatories, including objections where agreement is lacking.
- 6. **July 15, 2021** – Parties to email exhibit-list form to Chambers.
- 7. **Exchange of witness and exhibit lists.**
 - (a) **June 15, 2021** – Parties to exchange witness lists.[Deadline for exchange of exhibit lists is included in the parties’ stipulation.]
 - (b) **June 24, 2021** – Plaintiffs as a group will jointly identify no more than 50 fact witnesses whom they are most likely to call at trial.
 - (c) **July 1, 2021** – Defendants as a group will jointly identify no more than 50 fact witnesses whom they are most likely to call at trial. The 50 fact witness limitation does not apply to pharmacists or prescribers who may be implicated by the sample prescriptions for which defendants must produce “notes fields” information. In this regard, Defendants as a group will jointly identify no more than 10 pharmacist or prescriber fact witnesses whom they are most likely to call at trial to address “notes fields” information within **14 calendar days** after Defendants’ certification of completion of production of the “notes fields” information.
- 8. **Filing of witness lists and exhibit lists**
 - (a) **July 26, 2021** – Parties to file witness lists.
 - (b) **September 10, 2021** – Parties to file exhibit lists.
- 9. [Deadline to exchange responsive deposition designations, objections to affirmative designations, and non-repetitive and non-responsive designations from depositions previously affirmatively designated during this period is included in the parties’ stipulation.]
- 10. **August 9, 2021** – Parties to file proposed questions for the Court’s *voir dire*.
- 11. **August 12, 2021** – Deadline to depose “most likely” witnesses who were not earlier deposed. A party must make a showing of good cause why they did not take the deposition of such a witness during the regular discovery period. Such depositions may also be taken by agreement. A

party must show good cause to call at trial a witness who was not among the identified “most likely” trial witnesses. The parties shall work in good faith to schedule depositions, as necessary, of later-identified pharmacists or prescribers identified by Defendants to address “notes fields” information, as set out in Section K.7.c.

12. **August 19, 2021** – Trial briefs due.
13. [Deadline for exchange of final deposition designations and objections is included in the parties’ stipulation.]
14. **August 23, 2021** – Deadline to file objections to witnesses.
 - (a) [Deadline to file objections to exhibits is included in the parties’ stipulation.]
15. [Deadline to file objections to deposition designations is included in the parties’ stipulation.]
 - (a) [Deadline to submit advance exhibit objections is included in the parties’ stipulation.]
16. **August 30, 2021** – Jury questionnaires sent to prospective jurors.
17. **September 17, 2021** – Completed jury questionnaires to be distributed to trial counsel.
18. **September 21, 2021** – Court and trial counsel to review jury questionnaires.
19. **September 28, 2021** – Final pretrial conference.

L. Trial

1. **September 29, 2021** – Jury selection begins.
2. **October 4, 2021** – Opening statements.

IT IS SO ORDERED.

/s/ Dan Aaron Polster
DAN AARON POLSTER
UNITED STATES DISTRICT JUDGE

Dated: May 19, 2021